Transportation Synthesis Report

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Access Management – Reasonable Alternative Access

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Transportation Synthesis Reports (TSRs) are brief summaries of currently available information on topics of interest to WisDOT technical staff in highway development, construction and operations. Online and print sources include NCHRP and other TRB programs, AASHTO, the research and practices of other state DOTs, and related academic and industry research.

REQUEST FOR REPORT

Wisconsin and many other states and jurisdictions either have in place or are planning comprehensive access management programs. Access management is viewed by the TRB Committee on Access Management as the "control of access along surface (non-freeway) streets—primarily arterials and major collectors. The concept concentrates on restricting the number of direct accesses to major surface streets, providing reasonable indirect access, effectively designing driveways, and enforcing safe and efficient spacing and location of driveways and signals."

Nationally, legal issues abound in the access management arena because controlling access often forces property owners to accept less than desirable access. Grey areas are prevalent when it comes to acquiring access rights for a property so that a driveway can be closed or moved for reasons of safety or good spacing. What constitutes "reasonable alternative access" is regularly tested in the courts. Compensation for access modification that is thought by owners to devalue their property is often very controversial. The RD&T Program was asked to compare how other states are currently defining "reasonable alternative access."

SUMMARY

First we directed that question to selected state DOTs. Minnesota and Michigan gave detailed answers, which are shown below. We then contacted Kim Fisher of the Transportation Research Board. Kim is the TRB staff person for Committee AD107 on Access Management. The committee has positioned itself as the national focus for access management, identifying issues to be addressed, and developing a strategic plan to establish benchmarks for improving state-of-the-practice and state-of-the-art in access management. Kim directed our question to committee chair Art Eisdorfer, who shared some very helpful insights with us, and forwarded it to many members and peers of the committee for their response. These responses also appear below.

Please note that an excellent summary of the committee's goals and agenda can be viewed at http://www.accessmanagement.gov/aboutus.html. Also, the committee is close to publishing the "Comprehensive Access Management Manual," which will establish the state-of-the-art practice in access management, and will provide guidance, information and assets to assist state and local agencies in program development. The book will have a good chapter on access law, and is expected to be available in early 2003. If you would like to be notified when the book is available, contact Kim Fisher at kfisher@nas.edu

RESPONSES TO THE QUERY

Peggy Reichert
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(Minnesota DOT, Director of the Land Use and Access Management Program)
In Minnesota, we refer to the term "reasonably convenient and suitable" access. What is reasonably convenient and suitable depends on the circumstances and is a specific, fact-based legal finding of the courts if there is a disagreement. "Reasonably convenient" may not necessarily be the most convenient, as in a direct driveway, and may involve some circuitous travel. This needs to be generally convenient, and there is no specific distance tied to the definition.

The "suitable" part depends on the specific land use, and the access needs of that activity. It also may depend on the specifics of the site, its size, layout, arrangement of structures etc. For example, a new gas station that is developed in a suburb may be laid out to take access off an internal access road, and only have one entrance from that road, with circulation totally on the site. The site is big enough and can be used as a gas station in that manner...so this indirect access to the state highway system is considered reasonably convenient and suitable. Another, older gas station, on a small lot that only has access available from the trunk highway, may be given two entrances from the highway. The site won't work for its highest and best use under local zoning (as a gas station) without two entrances. So in order to provide reasonably convenient and suitable access, we allow two direct drive entrances.

Courtney Bates
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(Michigan DOT, Office of Communications)
The department has established driveway spacing and offset guidelines that define what should be reasonable on the road side of the right-of-way line based on the posted speed limit and sight distance restrictions. However, on the land use side of the right-of-way line, local units of government control the size of the lot frontage and whether additional access options are available or required of the property owner. With over 1,300 of the 1,800 units of government having control of this latter feature, it makes it difficult to define reasonable access without the cooperation and coordination of the local units of government. Therefore, without the support of local zoning ordinances that include access management standards and a coordinated site plan approval process, the term "reasonable" is left wide open to interpretation by many.

The following comments are provided by members and peers of the TRB Access Management Committee.

Arthur Eisdorfer
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(New Jersey DOT Manager; Access Management Committee Chair)
I am not familiar with a definition of "reasonable" by itself. In NJ, there are two types of access that pertain to state highways: direct and alternative. There is no definition of reasonable direct access, but the implication is that direct access that meets the standards would be reasonable.

Reasonable alternative access is a substitute for direct access when direct access is revoked. When the commissioner revokes a direct access permit, s/he is responsible for providing all necessary assistance to the property owner in establishing the alternative access, which includes the funding of any such improvements by the department. Until the alternative access is complete and available for use, the permit cannot be revoked. The commissioner must provide to the affected property owner and lessee(s) a plan depicting how alternative access will be obtained after revocation, and the improvements that will be provided by the department to secure the access. Alternative access is assumed to exist if the property owner enjoys reasonable access to the general system of streets and highways in the state, and in the case of the following classes of property, the applicable condition is met:

- For commercial property, access onto any parallel or perpendicular street, highway, easement, service road or common driveway, of sufficient design to support commercial traffic to the business or use, and situated so that motorists will have a convenient, direct and well-marked means of reaching the business or use and returning to the highway.
- For industrial property, access onto any improved public street, highway or access road or an easement across an industrial access road, provided that the street, highway or access road is of sufficient design to support necessary truck and employee access as required by the industry.

Kristine Williams
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(USF College of Engineering, Center for Urban Transportation Research: Program Director, Planning & Corridor Management)
Here's my take on it. This is an issue with political and legal implications. The right of access in some states ("Abutter's rights states") is construed as one of direct access to the abutting road. In most states, however, it's construed as one of reasonable access to the abutting system of public ways. My feeling is that since this is a legal issue that is construed, you're best not to try and define it specifically, but it would be helpful to have it addressed in statute or rule.

The Florida courts typically define the right of access as one of reasonable access to the abutting system of public ways. The Florida Supreme Court, for example, defines the right of access as "the reasonable capacity of a landowner to reach the abutting public way by customary means of locomotion and then to reach the general system of public ways." Palm Beach County v. Tessler, 538 So.2d 846 (Fla. 1989).

In construing reasonable access, courts look to whether access has been substantially diminished. Because circumstances of individual properties vary widely, the availability of reasonable access must be determined on a case-by-case basis. Whether access has been substantially diminished is evaluated on a continuum from relatively minor route changes, which are not usually compensable, to extremely circuitous rerouting of access, or complete denial of access to a public street, which are compensable.

While every owner of property that abuts a road on the state highway system has a right to reasonable access to the abutting state highway, the owner does not have the right of unregulated access to the highway. The operational capabilities of an access connection may be restricted by the department. Property owners are encouraged to implement the use of joint access where legally available.

Robert Downie
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(Florida DOT, Assistant General Counsel)
Kristine Williams forwarded your request regarding how Florida defines "reasonable access." I handle most of the access management cases for FDOT, and I can tell you that what is "reasonable" is sometimes hard to pin down.

The way it generally works is that if direct access to the state highway system would result in a driveway that does not meet spacing standards or otherwise poses a safety or operational problem, and there is indirect access available from a side street, then DOT takes the position that the indirect access is reasonable. However, if the side street access is overly circuitous, we may face a claim for loss of access through a civil action in inverse condemnation. It really comes down to a case-by-case determination.

The following link will take you to a decision by a Florida Administrative Law judge that discusses "reasonable access" starting at paragraph 26. http://www.doah.state.fl.us/ros/2001/01%2D0009%2EPDF

Philip Demosthenes
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(Colorado DOT, Access Program Administrator, Safety and Traffic Engineering Branch)
You are requesting, to some degree, an opinion on a legal issue dealing with property rights. The following is my personal opinion based on 25 years in access management. I am not a lawyer, but this is my working knowledge.

In Colorado the term "reasonable" is not defined in our access management regulations for several reasons, including: 1) reasonable is fact driven (site specific) and 2) as a legal matter it is an issue for a jury or judge to decide.

Our lack of providing a definition has added some confusion especially for those who want structure and positive guidance. But in the 21 years of the Colorado regulations, not having it defined in our program documents has not been a problem. I think providing a definition would create larger problems. People are fooling themselves if they believe positive regulatory guidance can be provided by writing a few paragraphs. Only original source materials—court decisions—are guidance.

Colorado courts have the authority to find the balance of the reasonableness of regulatory application when there is a disagreement between a property owner and the agency. It is not an agency decision. To some degree it can be a legislative decision—they can define it—but in the long run it will end up back in court unless the legislature simply gives all the rights to the property owner, ties the hands of the agency, so no owners ever complain to the courts.

In most states, Supreme Court case law decisions within condemnation and inverse proceedings have defined reasonable access—as they try to find the balance between regulatory law for public safety (no compensation) and private property rights found in both state and federal constitutions (compensation). In the early 1900s, the U.S. Supreme Court determined this was a state issue (not federal).

The purpose of access management is to protect the health, safety and welfare of the public, NOT to provide reasonable access.

Richard Henry
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(FHWA- Ohio Division, Division Right-of-Way Officer)
Whenever you come across the term "reasonable," you have to understand that it is always relative and must be viewed in a situational context. What is reasonable in one instance may not be reasonable in others. In no state that I'm aware of, are property owners entitled to unrestrained, unlimited access to the public roadways. Reasonable police powers may be exercised by the authorities to protect the public safety and to ensure the free flow of traffic. Sometimes the exercise of such powers interferes with the desires and even the ease at which access may be made to a given property and the owner may suffer some inconvenience. If an agency totally denies access by any means, the exercise of such power becomes elevated to a "taking" under the power of eminent domain and compensation is due the property owner.

The realm of "reasonable access" lies somewhere in between unrestricted or unrestrained access and the total denial of access, and may or may not warrant compensation, again depending on the specific details of the individual case or circumstances. Generally speaking, you could say that if the restriction of access by the authorities is in such a manner or degree that the property can maintain its present use or its highest and best use (even though it may be less convenient), then that particular control of access is reasonable. Conversely, if the restriction imposed by the authorities would prevent the continued use or deny the highest and best use of the property, that control would be deemed unreasonable and would require compensation to the property owner. For the above reasons, I don't think you will find an absolute definition of the term "reasonable" and ultimately it must be defined by the court based on the facts of a particular case.

Chris Huffman
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(KDOT Bureau of Traffic Engineering, Corridor Management Administrator)
Given the current case law on the subject, there are really no hard and fast rules. The current case law in Kansas basically says that each case will be reviewed on its own merits. I can send you transcripts of some cases, if you like.

Ronald Hill
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(Division Right-of-Way Officer, FHWA- Arizona Division Office)
Am sure that this one will cause great discussion among the committee. I believe that you will find that the term "reasonable" is often determined through the individual court cases in each state, and so what is "reasonable" in one state might be considered "unreasonable" in another.

Don Keith
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(FHWA- Illinois Division, Right-of-Way Program Manager)
IDOT has recently had several inquiries from various districts wanting to know if the closing or moving of entrances is compensable under Illinois law. Legal has advised that a private property owner has a right of access from his or her property to adjacent streets or highways subject to reasonable restrictions. If the highway is adjacent to more than one street or highway, the property owner has the right of reasonable access to each street or highway. The IDOT can negotiate with the property owner to acquire access. Ordinarily, however, a highway must be designated

as a freeway before complete access to the abutting state highway can be acquired. In extraordinary cases, if a safety issue can be proven the Attorney General has indicated a willingness to take access rights by condemnation without the necessity of a freeway order.

Rick Laughlin
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(South Dakota DOT, Corridor Preservation Specialist)
SDDOT staff have been using the standard that if access is possible to a side street, it meets the test. However, courts have often measured such regulations against what a hypothetical "reasonable man" would think. "Reasonable access" has not been tested in South Dakota courts. However, focusing on the definition of reasonable is like steering around an ice cube and ignoring the iceberg. There is so much more to regulation of access. Let me know if you'd like more information about our administrative rules, permits, policies etc.

Allan Wright
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(Vermont Agency of Transportation, Chief of Utilities and Permits)
We use this definition: "The minimum number of connections, direct or indirect, necessary to provide safe ingress and egress to the state highway system based on the Access Management Classification System, projected connection, roadway traffic volumes, and the type and intensity of the land use." It's not totally original but is a derivation of others I've seen.

Del Huntington
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(Oregon DOT, Access Management Coordinator)
In Oregon, "reasonable" has been interpreted differently by different people. For the purposes of an appraisal from right-of-way section when exercising eminent domain, "reasonable" is pretty black and white and means most any legal road network, easement, or can even include platted/planned unbuilt street connections. The experience of the court in Oregon establishes this fact. The judges have been pretty consistent on this point. When trials have included a jury, it tends to be more gray, and might be summarized, "Would a reasonable person find that the reasonable access is reasonable, in both circuity and cost?"

For the purpose of permitting decisions, the administrative rule states that the department shall consider a) the authorized and planned uses for the property identified in the acknowledged comprehensive plan, and b) whether the type, number, size and location of the approach(es) (we use "approach" for driveway), is adequate to serve the volumes and type of traffic reasonably anticipated to the site, based on planned uses. In the vast majority of permitting decisions, the administrative rule has worked well and we have reached good conclusions. We are currently working on a rewrite, and will include "alternate" access. The argument has been made that an agency predetermines that all access is reasonable and it ends the discussion. No one argues that they have alternate access, but they want an opportunity to discuss if the alternate access is reasonable.

Dave Leighow
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(FHWA- Washington Division, Right of Way Program Manager)
Washington State DOT has elected to not give "reasonable" a definition. We speak to circuity of travel not being compensable in our statutes, but we do not speak to a definition of "reasonable."